# APPENDIX

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF IOWA, DAVENPORT DIVISION

Civil No. 1-224

FIRST IOWA HYDRO ELECTRIC COOPERATIVE, F. A. E. GILLMOR, CARL J. MITZNER, HARRY J. STRONG, HARRY IMEL, AND P. H. NABER, *Plaintiffs*,

v.

IOWA-ILLINOIS GAS AND ELECTRIC CO., IOWA POWER AND LIGHT CO., IOWA SOUTHERN UTILITIES CO., INTERSTATE POWER CO., UNION ELECTRIC POWER CO., KANSAS CITY POWER AND LIGHT CO., IOWA ELECTRIC LIGHT AND POWER CO., NORTHWEST LIGHT AND POWER CO., WISCONSIN POWER AND LIGHT CO., IOWA PUBLIC SERVICE CO., IOWA UTILITIES ASSOCIATION, *Defendants*.

## MEMORANDUM OF DECISION AND ORDER FOR JUDGMENT*

The following matters were heard by the Court with consent of all parties and were submitted on January 20, 1956:

1. The motions of defendants to dismiss the complaint as to plaintiff Harry J. Strong and all other plaintiffs, filed on October 10, 1955.

2. The Report of the Special Master filed on January 4, 1956, and his order filed December 22, 1955.

3. The motions of defendants to dismiss the complaint as to plaintiff F. A. E. Gillmor and as to plaintiff First Iowa Hydro Electric Cooperative, filed January 16, 1956.

* R. 139-154.

4. The Supplemental Report of the Special Master filed January 17, 1956, and his order filed January 16, 1956.

5. The Petition for Review filed by plaintiffs on January 3, 1956, and their Petition for Review filed January 19, 1956.

6. The exceptions and objections of plaintiffs to the January 4, 1956 Report of the Special Master, filed January 19, 1956.

7. The objections and exceptions of plaintiffs to the January 17, 1956 Supplemental Report of the Special Master filed January 19, 1956.

8. The motion of plaintiffs to vacate the order appointing the Special Master, filed January 19, 1956.

9. The motion of defendants to strike plaintiffs' motion to vacate order appointing Special Master, made in open court on January 20, 1956.

10. The motion of defendants renewing that portion of their October 10, 1955 and their January 16, 1956 motions to dismiss for failure of plaintiffs to comply with the Court's deposit orders of September 21 and September 27, 1955, made orally in open court on January 20, 1956.

Plaintiffs appeared by their attorneys of record, James R. McManus, Allan R. Shepherd, Xavier C. Nady and James D. France, Union Electric Power Company appeared by its attorney, Robert H. Walker. Iowa-Illinois Gas and Electric Company appeared by its attorney, Larned A. Waterman. Iowa Power and Light Company appeared by its attorney, Howard A. Steele. Iowa Southern Utilities Company appeared by its attorneys, Maxwell A. O'Brien and Robert Valentine. Interstate Power Company appeared by its attorneys, E. Marshall Thomas and Clement F. Springer. Kansas City Power and Light Company appeared by its attorneys, Joseph J. Kelly, Jr. and Earl Smith. Iowa Electric Light and Power Company and

Northwestern Light and Power Company appeared by their attorneys, V. Craven Shuttleworth, Tyrrell M. Ingersoll and Harry E. Wilmarth. Iowa Public Service Company appeared by its attorney, Sylvester F. Wadden, and Iowa Utilities Association appeared by its attorneys, Frederic M. Miller and Sherwin J. Markman. Defendant Wisconsin Power and Light Co. was not served with process and has not appeared in this action. Reference herein to "defendants" excludes such defendant. In conformity with the Rules, the Court makes—

## FINDINGS OF FACT

The Court finds the following chronology of events is pertinent to the matters before the Court:

1. The action was commenced February 18, 1954, and seeks the recovery of $120,000,000 in treble damages for alleged violations of the federal antitrust laws.

2. On March 10, 1954, Union Electric Power Company, one of the defendants, noticed the depositions of the individual plaintiffs and others.

3. On May 16, 1955, the Court ordered the deposition of one of the plaintiffs, Harry J. Strong, the secretary, treasurer, director and general manager of plaintiff, First Iowa Hydro Electric Cooperative. In this order the Court also constrained all the defendants to participate in the deposition.

4. On June 6, 1955, the deposition of Harry J. Strong commenced pursuant to court order and under the appointment of Wayne G. Cook, as Special Master, with the prior consent of all parties.

5. On June 23, 1955, the Special Master ordered the production of the bank records of the deponent because of the commingling of funds of the corporate plaintiff in his personal account, and ordered a two-weeks' recess in the deposition to permit the defendants an opportunity to obtain and inspect such records.

6. On July 12, 1955, the deposition of Harry J. Strong recessed until July 25, 1955, to permit the Court to dispose of matters raised by plaintiffs in connection with their proposed efforts to remove the Special Master. (On July 18, 1955, plaintiffs filed a motion to remove Wayne G. Cook as Special Master, which the Court subsequently denied.)

7. On July 22, 1955, the Court ordered the deposition of Harry J. Strong to resume on August 1, 1955.

8. On August 1, 1955, the Special Master, at the request of plaintiffs, postponed to September 6, 1955, the date for the deposition of Harry J. Strong in order to give plaintiffs an opportunity to determine whether or not an appeal would be taken from the Court's order denying plaintiffs' motion to vacate the appointment of the Special Master.

9. On September 2, 1955, the Court, on its own initiative, but on behalf of the plaintiffs, ordered that the deposition of Harry J. Strong be resumed at a date later to be determined by the Court.

10. On September 15, 1955, the Court ordered that the deposition of Harry J. Strong be resumed on October 3, 1955.

11. On September 16, 1955, plaintiffs filed a motion for leave to remove their attorneys of record.

12. On September 21, 1955, the Court, having accepted the resignation of Wayne G. Cook, appointed Edward A. Doerr as Special Master. The powers accorded Mr. Doerr were intentionally expanded by the Court pursuant to Rule 53 partly because of collateral issues raised by the plaintiffs which were not connected with the pending discovery proceedings. In the same order, the Court also ordered the deposit forthwith into the registry of this Court of the sum of $2,500.00 by plaintiffs and the sum of $2,500.00 by defendants, to defray the fees and disbursements of the Special Master. This sum was duly paid by defendants.

13. On September 26, 1955, plaintiff Harry J. Strong, on behalf of all plaintiffs, filed a motion to defer the deposit. On September 27 the Court entered an order denying the motion and again ordered the deposit to be made forthwith.

14. On September 28, 1955, the Special Master, upon the informal request of Harry J. Strong, postponed the resumption date of his deposition to October 10, 1955.

15. On September 29, 1955, the Special Master ordered that the motion of plaintiffs to discharge their attorneys be heard on October 3, 1955.

16. On October 3, 1955, plaintiffs filed in the United States Court of Appeals for the Eighth Circuit a motion for leave to file petition for mandamus and injunction and for temporary stay order. This motion was denied by the appellate court on the same day.

17. On October 3, 1955, plaintiffs' motion to discharge their attorneys was heard and submitted to the Special Master. Plaintiffs defaulted at this hearing. On October 5, 1955, the Special Master nonetheless entered a conditional order of discharge.

18. On October 10, 1955, Harry J. Strong at the resumption of his deposition expressly refused to testify, although instructed so to do twice by the Special Master. On the same date defendant Union Electric Power Company filed motions to dismiss, which were joined in by all other defendants. (These motions were filed with the Special Master on October 10, 1955, and with the Clerk on October 11, 1955.)

19. On October 10, 1955, plaintiff Harry J. Strong filed an affidavit of prejudice directed against the presiding judge.

20. On October 17, 1955, plaintiffs, individually, and without acting through their counsel of record, filed various motions, including one to expunge the deposition of Harry J. Strong. On October 21, 1955, the

Court entered its order overruling the affidavit of prejudice filed by plaintiff Harry J. Strong.

21. On October 28, 1955, the Special Master entered an order striking from the court file the various motions filed individually by plaintiffs on October 17, 1955.

22. On November 18, 1955, the motions to dismiss filed by defendants on October 10, 1955 were heard and submitted to the Special Master.

23. On November 21, 1955, the Special Master entered his order finding that the refusal of Harry J. Strong to testify on October 10, 1955 was flagrant, willful and without justification or excuse and had the necessary effect of disrupting orderly procedure and hampering defendants in making their defense. The Special Master, however, ordered that the deponent be given an additional and final chance to testify and ordered his deposition to resume on December 6, 1955. The Special Master also found that the failure of all the plaintiffs to make the deposit required under the September 21 and 27 orders of the Court was flagrant, willful and without justification or excuse.

24. On November 28, 1955, certain individual plaintiffs, F. A. E. Gillmor, Harry J. Strong and P. H. Naber, filed notice of appeal to the United States Court of Appeals for the Eighth Circuit from the order of the Special Master of October 28, 1955, striking the various motions theretofore filed by the individual plaintiffs. No review of such order by this Court was ever sought by any plaintiff.

25. On November 29, 1955, the Special Master, upon the oral request of plaintiffs through their attorneys of record, delayed the resumption of Harry J. Strong's deposition until December 20, 1955.

26. On December 20, 1955, plaintiff Harry J. Strong at the resumption of his deposition again expressly refused to testify, although he was then and had been previously advised by the Special Master of the con-

sequences of such refusal. The witness stated that he would take his chances on a dismissal and adhered in his refusal to testify. The witness was informed that the defendants were invoking the sanctions permitted by Rules 37(d) and 41(b), which would result in a dismissal of the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative.

27. On December 22, 1955, the Special Master entered his order of dismissal as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, which the Court treats as a recommendation of dismissal.

28. On December 22, 1955, the Special Master ordered the deposition of plaintiff F. A. E. Gillmor, president and director of plaintiff First Iowa Hydro Electric Cooperative, to commence on January 10, 1956.

29. On January 3, 1956, plaintiffs by their attorneys of record filed a petition to review the order of the Special Master entered on December 22, 1955.

30. On January 4, 1956, the Special Master filed his Report on the dismissal of the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative.

31. On January 9, 1956, the Court assigned for hearing on January 20, 1956, the Report of the Special Master, plaintiffs' petition for review filed January 3, 1956, and the failure of plaintiffs to comply with the two deposit orders of the Court.

32. On January 10, 1956, plaintiff F. A. E. Gillmor at the taking of his deposition refused to testify, after being required by the Special Master to testify. Two of the defendants, orally and in the presence of F. A. E. Gillmor, moved to dismiss the action as to him upon the same grounds urged in defendants' motions to dismiss filed October 10, 1955. On the same day, all of the defendants joined in written motions

of dismissal as to F. A. E. Gillmor and First Iowa Hydro Electric Cooperative.

33. On January 16, 1956, defendants' motions to dismiss were heard and submitted to the Special Master, who entered his order of dismissal on the same date, dismissing the action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative, subject to confirmation by the Court.

34. On January 17, 1956, the Special Master filed his Supplemental Report on the dismissal of the action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative. On the same day the Court ordered that such Supplemental Report be heard with the other matters assigned for hearing on January 20, 1956.

35. On January 19, 1956, plaintiffs filed their exceptions and objections to the Report of the Special Master filed January 4, 1956, their petition for review of the order of the Special Master filed January 16, 1956, and their objections and exceptions to the Supplemental Report of the Special Master filed January 17, 1956.

36. On January 19, 1956, plaintiffs filed with the Court their motion to vacate the appointment of a Special Master.

37. On January 20, 1956, in open court, defendants orally moved to strike plaintiffs' motion to vacate the appointment of the Special Master and renewed their motions to dismiss the action as to all plaintiffs for failure to comply with the two deposit orders of the Court.

The Court makes the following additional findings of fact:

1. *General.*

I find that proper and timely service of pleadings, motions, orders and reports was made in all required

instances. The several motions of defendants and the orders and reports of the Special Master were served personally on each of the named plaintiffs as well as upon their attorneys of record. Plaintiffs have not objected or excepted to any of the facts stated in any of the orders or reports of the Special Master, and such facts stand unchallenged. Defendants have not sought to impose any contempt penalty upon any of the plaintiffs, but have invoked the sanctions afforded by Rules 37(d) and 41(b). I find that the attorneys of record for the plaintiffs have no interest in the subject matter of the litigation. On October 5, 1955, the Special Master entered a conditional order of discharge as a result of his hearing on October 3, 1955 on the motion of plaintiffs to discharge their attorneys of record. I find that the plaintiffs have failed to exhaust the remedies afforded them by the conditional terms of that order and have failed to seek any review by this Court of the October 5 and 28, 1955 orders of the Special Master. The October 5 and 28 orders of the Special Master were ex parte as to defendants. The plaintiffs' claim that they are unrepresented by any attorney is without merit. I find that the plaintiffs are represented by James D. France, Xavier C. Nady, James R. McManus, Allan R. Shepherd, as attorneys of record, and the firm of Haley, Doty and Schellenberg appear of counsel.

2. *Plaintiffs' Motion to Vacate the Appointment of the Special Master and Defendants' Motion to Strike the Same.*

On May 23, 1955, the Court appointed Wayne G. Cook as Special Master, following a conference with counsel for plaintiffs and counsel for several of the defendants. I find that plaintiffs have initially consented to the appointment of a Special Master.

Mr. Edward A. Doerr was appointed as Special Master by the Court on September 21, 1955, following the resignation of Mr. Wayne G. Cook. Plaintiffs'

motion to vacate the appointment of Mr. Doerr was not made to the Court until January 19, 1956, after the Special Master had issued various orders, rulings and reports. I find the plaintiffs' motion was not timely filed with the Court.

The complaint seeks recovery of $120,000,000 in treble damages and equitable relief under the antitrust laws. The period of time covered by the complaint extends from 1938 to 1954. There are ten defendants, whose separate answers pose evidentiary and procedural problems of great magnitude. The issues in this action involve engineering, financing, economic and other technical problems of vast complexity. The discovery proceedings, still in their early stages, have resulted in volumes of testimony and documents. The record discloses many difficult problems pertaining to marketability of power, project design, economic engineering feasibility, financing methods and expectations, costs of construction and power, additional and numerous expert witnesses, and other allied matters which would be the subject of extended discovery proceedings requiring continued supervision to prevent oppression or hardship to any party. The documents which plaintiffs have voluntarily produced in response to defendants' interrogatories and which plaintiffs have produced under order of Court and order of the Special Master are detailed and voluminous. For example, the transcripts of the Federal Power Commission hearings exceed 5,000 pages.

I find that the issues are complicated and that the reference was not only proper but necessary in the interests of justice. This action, peculiarly and appropriately, requires the appointment of a Special Master.

The objection of the plaintiffs to the appointment of the Special Master, insofar as it is based upon an alleged deprivation of the right to trial by jury, must be denied. Rule 53 permits such an appointment, and this action required it. In my order of January 9, 1956, I pointed out that the appointment of the Special

Master does not and cannot deprive plaintiffs of their right of trial by jury if their request therefor has been seasonably made, nor does it empower the Special Master ultimately to hear and determine the issues between the parties upon a trial of this cause. I further find that the appointment of the Special Master, Edward A. Doerr, was without prejudice to the plaintiffs.

3. *Refusal to Deposit.*

On September 21, 1955, the Court ordered plaintiffs to deposit forthwith the sum of $2,500.00 to defray fees and disbursements of the Special Master. A like sum was commanded of the defendants and was duly paid by them into the registry of this Court. On September 26, Harry J. Strong, on behalf of plaintiffs, requested a deferment of their deposit, but this was denied by court order entered September 27, 1955, and the deposit was again ordered to be made by plaintiffs forthwith. The record discloses that plaintiffs had sufficient funds to make the deposit. Plaintiffs at no time sought to avoid the deposit on the grounds of insufficient funds. None of the individual plaintiffs has tendered the whole or any part of the required deposit. I find that plaintiffs had sufficient funds to make the deposit. I find that the failure of plaintiffs to make the required deposit was flagrant, willful and without justification or excuse. I find that such failure constituted a refusal to comply with the orders of this Court and should be subject to the sanctions permitted by Rule 41(b).

In their motions filed on October 10, 1955, defendants sought, under Rule 41(b), dismissal of the action against all of the plaintiffs for their failure to comply with the deposit orders of this Court. The motions are well taken.

4. *The Refusal to Testify.*

The deposition of Harry J. Strong was begun under an order of this Court, and its resumption was ordered

both by this Court and by the Special Master. On September 28, 1955, the Special Master, upon the informal request of the witness, postponed the resumption date to October 10, 1955. On October 10, 1955, Harry J. Strong expressly refused to testify, although instructed twice by the Special Master to testify. The witness left the hearing room while one of the defendants was attempting to advise him that sanctions would be sought under Rule 37(d), should he persist in his refusal to testify. Despite such conduct, the Special Master gave the witness a final chance to testify and ordered his deposition to resume on December 6, 1955. In this order, which was entered on November 21, 1955, the Special Master found that the witness' refusal to testify was flagrant, willful and without justification or excuse and had the necessary effect of disrupting orderly procedure and hampering defendants in making their defense. The witness was and is secretary, treasurer, director and general manager of plaintiff First Iowa Hydro Electric Cooperative. The order provided that, if the witness again refused to testify, the action would be dismissed as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative. The order was served on all of the named plaintiffs and on their attorneys of record. At the request of plaintiffs through their attorneys of record, the resumption date was postponed until December 20, 1955. On December 20, 1955, the witness was again present and again expressly refused to testify. He stated that he would take his chances on a dismissal of the action.

I find that plaintiff, Harry J. Strong, was secretary, treasurer, director and managing agent of plaintiff First Iowa Hydro Electric Cooperative. I find that his refusal to testify was flagrant, willful and without justification or excuse, and had the necessary effect of disrupting orderly procedure and was prejudicial to the defendants in making their defense. I find that the witness was given ample notice of the consequences of his failure to resume his deposition and was given ample opportunity to testify. On October 10, 1955, the

defendants moved to dismiss the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, under Rule 37(d) and under Rule 41(b). I find that the motions are well taken.

The Court order of May 16, 1955, provided that the deposition of Harry J. Strong was to proceed until completed. I find that that order and the subsequent orders of the Court and Special Master dealing with the resumption of Harry J. Strong's deposition were ignored by the witness. His conduct was contumacious, his attitude defiant, his reasons for refusing to testify invalid.

On December 22, 1955, the Special Master ordered the deposition of plaintiff F. A. E. Gillmor, president and director of plaintiff First Iowa Hydro Electric Cooperative, to commence on January 10, 1956. On January 10, 1956, F. A. E. Gillmor refused to testify, although admonished by the Special Master. Instead, this plaintiff read a self-serving statement into the record and started to leave the hearing room. Before he departed, two of the defendants, orally and in his presence, moved to dismiss the action as to him upon the same grounds urged in defendants' motions to dismiss filed October 10, 1955. The witness had been served with copies of the Special Master's order of December 22, 1955, dismissing the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, and he was served with copy of the Special Master's report filed January 4, 1956. He was fully advised of the consequences of his refusal to testify.

I find that plaintiff F. A. E. Gillmor was president and director of plaintiff First Iowa Hydro Electric Cooperative. I find that the refusal of the witness to testify was flagrant, willful, and without justification or excuse and had the necessary effect of disrupting orderly procedure and was prejudicial to the defendants in making their defense. I find that, under the circumstances, there was no necessity for according

this witness another chance to testify. As with witness Strong, the conduct of witness Gillmor was contumacious, his attitude defiant, his reasons for refusing to testify invalid. The disrespect which these parties exhibited toward judicial process is the proper subject of sanctions sought by defendants. On January 10, 1956, all of the defendants joined in written motions of dismissal of the complaint as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative. I find that the motions are well taken.

5. *The Orders and Reports of the Special Master.*

On January 4, 1956, the Special Master filed his Report, based on his orders of November 21, 1955 and December 22, 1955 pertaining to the dismissal of the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative. On January 17, 1956, the Special Master filed his Supplemental Report, based on his order of January 16, 1956 dismissing the action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative.

Plaintiffs have not objected or excepted to any of the facts stated in such orders and reports, and such facts stand unchallenged.

I find that the facts stated in the aforesaid orders and Reports of the Special Master are correct and admitted. I find that the dismissals recommended by the Special Master should operate as an adjudication upon the merits.

I sustain the aforesaid orders of the Special Master, approve and adopt his orders, Reports and recommendations, except with reference to the deposit orders of this Court, and find that the action should be dismissed as to plaintiffs Harry J. Strong, F. A. E. Gillmor and First Iowa Hydro Electric Cooperative for the willful refusal of plaintiffs Strong and Gillmor, both officers and one the managing agent of the corporate plaintiff, to testify at the taking of their depositions.

6. *Miscellaneous.*

The record in this action does not disclose that any of the five directors of the corporate plaintiff directed its managing agent or any officers to testify or made any attempt to comply with the deposit orders.

None of the individual plaintiffs and no officer or representative of the corporate plaintiff other than the attorneys of record appeared or was physically present at any time during the course of the hearing held on January 20, 1956.

I find that the interests of justice would not be served by affording plaintiffs Strong and Gillmor another opportunity to testify or granting plaintiffs further time in which to comply with the deposit orders. Those who flaunt judicial authority may do so at the minimum peril of dismissal. Courts must be equally concerned with rights of a defendant. Those rights have been prejudiced in the present action by the conduct of plaintiffs Strong and Gillmor.

The fees and disbursements of the Special Master, Edward A. Doerr, contained in the Supplemental Report filed January 17, 1956, are reasonable and are hereby approved.

The fees and disbursements of both Special Masters should be borne equally by plaintiffs and defendants. Defendants should recover all other costs.

## CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

1. The attorneys of record for the plaintiffs have no interest in the subject matter of this action.

2. The plaintiffs' petitions for review were heard by the Court on January 20, 1956. The relief therein sought must be denied. The exceptions and objections of plaintiffs to the Report of the Special Master filed

January 4, 1956 and to the Supplemental Report of the Special Master filed January 17, 1956, should be overruled.

3. The motion of defendants renewing that portion of their October 10, 1955 and January 16, 1956 motions to dismiss for failure of the plaintiffs to comply with the Court's deposit orders must be sustained.

4. Any objection to the appointment of Edward A. Doerr as Special Master would of necessity have to be made to the Court appointing such Special Master. The plaintiffs failed to make timely objection to such appointment and have waived objection to such appointment.

5. The appointment of Edward A. Doerr as Special Master is valid and does not infringe upon or violate any of plaintiffs' constitutional rights.

6. Plaintiffs' motion to vacate the appointment of a Special Master should be overruled. Defendants' motion to strike plaintiffs' motion to vacate such appointment should be sustained.

7. The power to impose sanctions is a necessary corollary of the power to administer justice. Apart from rule or statute, a court has the inherent power to require a deposit of security for costs or to dismiss an action as against a party who has failed to comply with an order of court. These matters are also expressly covered by the Federal Rules of Civil Procedure. I conclude that the action should be dismissed as against all of the plaintiffs for their willful failure to comply with the deposit orders of this Court.

8. I conclude that sanctions may be imposed under Rule 41 for the failure of a plaintiff to comply with court orders, and that the action should be dismissed as to Harry J. Strong under Rule 41. I conclude that the action as to plaintiff Harry J. Strong and plaintiff First Iowa Hydro Electric Cooperative should also be dismissed under Rule 37 for the failure of the

witness, as a party and as an officer and managing agent of a corporate party, to resume his deposition.

9. I conclude that the action should be dismissed under Rule 37 as to F. A. E. Gillmor and First Iowa Hydro Electric Cooperative for the refusal of plaintiff F. A. E. Gillmor, president of plaintiff First Iowa Hydro Electric Cooperative, to testify in his deposition.

10. I further conclude that the dismissals are within the inherent power of the Court.

11. I conclude that the orders and reports and recommendations of the Special Master should be confirmed, except with reference to the deposit orders of this Court, and that defendants' motions to dismiss should be sustained.

12. I conclude that the dismissals should operate as an adjudication on the merits.

## ORDER FOR JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The action should be and is hereby dismissed as to plaintiffs, First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. N. Naber.

2. Such dismissal shall operate as an adjudication upon the merits.

3. The fees and disbursements of Wayne G. Cook as Special Master and Edward A. Doerr as Special Master shall be assessed against and paid by the plaintiffs and defendants equally. The compensation of Wayne G. Cook was initially ordered to be advanced by defendants, but subject to final order of this Court. The fees and disbursements of both Special Masters shall be taxed one-half against plaintiffs and one-half against defendants, and

defendants shall be credited for all advancements heretofore made. The fees and disbursements of Edward A. Doerr shall be paid within thirty days of entry of this judgment. Upon failure of either party to make such payment within the time allowed, the Clerk shall forthwith issue a writ of execution in favor of the Special Master, and against the delinquent party or parties. All other costs are taxed against plaintiffs, severally.

The Clerk is directed to enter judgment forthwith.

Dated at Des Moines, Iowa, this 25th day of January, 1956.

/s/ Wm. F. Riley

William F. Riley

United States District Judge